



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

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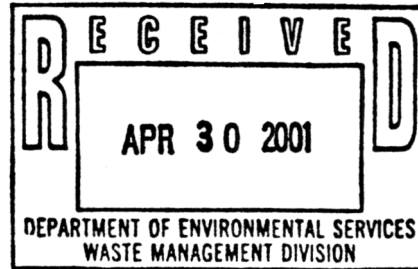


Charles Huckins, President
Huckins Oil Company, Inc.
515 Fourth Range Road
Pembroke, NH 03275

RE: DES Site #198903031
Ampet Oil/Huckins Oil
Route 16
Wakefield, NH 03872

& DES Site # 198808034
Belmont Gulf
Route 106
Belmont, NH 03220

**ADMINISTRATIVE ORDER
BY CONSENT
WMD 01-03**



A. Introduction

This Administrative Order by Consent ("Order") is issued by the Department of Environmental Services, Waste Management Division, to the Huckins Oil Company, Inc. with the consent of its president, Charles Huckins, pursuant to RSA 146-C:9-a and RSA 147-A:17. This Order is effective upon signature by both parties.

B. Parties

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Huckins Oil Company, Inc. (Huckins Oil) is a New Hampshire Corporation located at 515 Fourth Range Road, Pembroke, NH 03275. Charles Huckins is the president of Huckins Oil and resides at the same address.

C. Statements of Facts and Law

Wakefield Site

1. RSA 146-C authorizes DES to regulate underground storage tank (UST) facilities. Pursuant to RSA 146-C: 9, the Commissioner of DES has adopted rules to implement this regulatory program (Env-Wm 1401, effective April 22, 1997, which superceded Ws 411, which was effective September 17, 1985 through November 1, 1990, and Env-Ws 411, which was effective November 2, 1990 through April 21, 1997).
2. RSA 146-A authorizes DES to regulate the reporting and remediation of oil discharges. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted rules to implement this

regulatory program (Env-Ws 412, effective November 20, 1996, which supercedes an earlier version of Env-Ws 412, effective November 2, 1991 through November 19, 1996).

3. RSA 485-C authorizes DES to establish requirements for the investigation, management and remediation of groundwater, as well as the establishment of groundwater management zones and issuance of groundwater management permits. Pursuant to RSA 485-C:4, the Commissioner of DES has adopted rules to implement this regulatory program (Env-Wm 1403, effective February 24, 1999, which supercedes Env-Ws 410, effective February 11, 1993 through February 23, 1999).
4. Huckins Oil owns property identified as Ampet Oil/Huckins Oil on Route 16 in Wakefield, identified on Wakefield Tax Map 32 as Lot 40 ("Wakefield Site").
5. Two 6,000-gallon, cathodically-protected, double-wall gasoline storage tanks were installed November 1, 1986 at the Wakefield Site and remain in the ground. The tanks are registered to Huckins Oil and are further identified in DES records as UST#0-113657. Six additional tanks (two 4,000-gallon gasoline, two 3,000-gallon gasoline, one 2,000-gallon diesel and one 550-gallon kerosene) were removed from the Wakefield Site in 1987 and a 550-gallon #2 fuel oil tank was removed on February 11, 1998.
6. Env-Wm 1403.15(f) requires that groundwater be monitored and results submitted in compliance with groundwater management permit conditions. On August 20, 1991, DES issued Groundwater Management Permit No.GWP-890331-W-001 ("the Permit") to the attention of Charles Huckins at Ampet Oil/Huckins Oil for the Wakefield Site. The Permit required tri-annual monitoring of wells and monthly treatment system monitoring.
7. Huckins Oil failed to conduct the tri-annual groundwater monitoring as required by the Permit (15 rounds of monitoring).
8. Env-Wm 1403.23(a) requires application for renewal of a groundwater management Permit 90 days before expiration of the Permit.
9. The Permit expired August 19, 1996. No application to renew the Permit has been received by DES to date.
10. Env-Wm 1403.23(b) requires compliance with the original conditions of groundwater management Permits, regardless of whether a renewal application is filed. Additionally, Env-Wm 1303.15(f) requires groundwater monitoring until groundwater quality criteria are achieved.
11. Huckins Oil failed to conduct the tri-annual groundwater monitoring after the Permit expired (13 rounds of monitoring from August 1996 to the present).
12. Env-Wm 1403.13(f) requires the submission of groundwater management Permit annual report.
13. Huckins Oil failed to submit five annual reports during the term of the Permit and failed to submit four annual reports after expiration of the Permit, as required by Env-Wm 1403.23(b).
14. By letter dated August 11, 1992, DES reminded Huckins Oil that groundwater monitoring results were overdue from August 1991 to the date of the letter.

15. By letter dated November 17, 1992, DES requested that Huckins Oil comply with the terms of the Permit, and noted that no groundwater monitoring results had been received.
16. By letter dated February 2, 1996, DES requested Huckins Oil to comply with the Permit and initiate a program of passive recovery of floating product. The letter also noted that the UST systems needed to be brought into compliance.
17. By letter dated November 8, 1996, DES requested Huckins Oil to submit a work scope and budget for groundwater sampling and the passive recovery of floating product. The letter was sent by certified mail. The letter indicated that DES would initiate cleanup and seek cost recovery if Huckins Oil did not conduct the work. Additionally, the letter indicated that Huckins Oil was liable for administrative and civil penalties.
18. Env-Wm 1401.18 requires the removal of bare steel tanks 25 years or older in age. On May 22, 1997, DES issued a Notice of Non-compliance to Mr. Wayne St. Jean of Cyr Oil regarding the Wakefield Site bare steel 550-gallon heating oil tank. DES issued a \$100 field citation and required permanent closure of the tank. The field citation has been not paid to date. The tank was removed on February 11, 1998.
19. By letter dated March 30, 1998, DES again requested Huckins Oil to comply with the terms of the Permit.
20. By Notice of Proposed Administrative Fine and Hearing No. AF98-18 dated April 30, 1998 ("the Notice"), the Waste Management Division sought administrative fines totaling \$4,300 against Huckins Oil for UST violations at Choo Choo Charlie's (the Wakefield Site's name in 1998). Prior to a hearing on the action, the Division withdrew the Notice.
21. By letter dated October 5, 1998, DES requested Huckins Oil to immediately submit a work scope and budget for groundwater sampling, passive recovery of floating product, and the preparation of a report detailing the current status of the free product and bioremediation program. The letter indicated that DES would initiate cleanup and seek cost recovery if Huckins Oil did not conduct the work. Additionally, the letter indicated that Huckins Oil was liable for administrative and civil penalties.
22. DES has never received the required work scope.
23. By letter dated July 13, 1999, DES notified Charles Huckins that the Huckins Oil reimbursement application had been reviewed and that the Huckins Oil facility (#0-113657) was not in compliance with Env-Ws 1401 and so was not eligible for reimbursement from the Oil Discharge and Disposal Cleanup Fund ("ODD Fund").
24. On November 3, 1999, DES visited a residence on Windy Hollow Road in Wakefield, adjacent to the Wakefield Site, to respond to a complaint about potential well contamination. The resident complained that her water had a significant odor whenever the water is high and noted that the Wakefield Fire Department had placed sorbent booms in the ditch near her home to remove petroleum contamination. DES noted petroleum odors and the existence of several monitoring wells on the Wakefield Site.

25. RSA 146-C:4, I. prohibits any person from operating a UST facility without a permit to operate from DES. Env-Wm 1401.07 requires that the owner of a UST facility apply to DES for a permit to operate.
26. DES records reflect that no permit to operate has been applied for or issued to the Wakefield Site since 1990.
27. Env-Wm 1401.11(a) requires an owner of a UST facility to conduct inventory monitoring of each UST and to maintain separate records for each tank and interconnected system.
28. DES records reflect that no inventory monitoring records for the two USTs at the Wakefield Site have been maintained.
29. Env-Wm 1401.25 requires that all USTs must be equipped with spill containment and overfill protection devices.
30. DES records reflect that the two USTs at the Wakefield Site are not equipped with spill containment and overfill protection devices.
31. Env-Wm 1401.31 requires that all leak monitoring equipment and devices must be maintained in good working order at all times to continuously perform their original design function and must be tested annually for proper operation in accordance with the manufacturer's requirements.
32. DES records reflect that no annual test has been conducted to ensure proper operation of the leak monitoring equipment and devices for the two UST systems at the Wakefield Site.
33. Env-Wm 1401.32 requires sacrificial anode systems to be tested within 6 months of installation and every 3 years thereafter by a qualified cathodic protection tester and requires the owner to submit the results of the test to the DES no later than 30 days after the date of the test.
34. DES records reflect that two UST systems were installed with sacrificial anodes at the Wakefield Site as of November 1, 1986, but that no cathodic protection test results have been received for the 6 months after installation and the years 1989, 1992, 1995 and 1998.
35. To date, DES has received no response to the July 13, 1999 letter and no information has been provided to document that the Wakefield Site is in compliance with the requirements of Env-Wm 1401 discussed in the letter.
36. By letters to Charles Huckins dated September 22, 1989, April 3, 1990, September 24, 1990, January 14, 1991, July 2, 1991, March 30, 1992, and December 18, 1992, DES advised Huckins Oil of its delinquent quarterly hazardous waste generator fees and of its failure to submit quarterly hazardous waste activity reports for the Huckins Oil facility. The total amount of the outstanding fees is \$1,475.58.
37. By letter dated February 21, 1997, DES sent Huckins Oil a certified letter regarding delinquent hazardous waste activity reports and the accompanying fees. The letter required a response with payment of the fees within 15 days of receipt of the letter. No fees have been received to date.

Belmont Gulf

38. RSA 147-A authorizes DES to regulate the management, including transportation and disposal, of hazardous waste. Pursuant to RSA 147-A:3, the Commissioner of DES has adopted rules to implement this regulatory program (Env-Wm 100 – 1000).
39. Huckins Oil owns property identified as Belmont Gulf on Route 16 in Belmont, and further identified on Belmont Tax Map 5 as Lot 4 and described in the deed recorded in the Belknap County Registry of Deeds at Book 848, Page 301 (“Belmont Gulf”).
40. On September 9, 1992, DES personnel conducted a hazardous waste incident investigation at Belmont Gulf.
41. During this investigation, DES personnel observed and counted 19 drums at Belmont Gulf. DES used a photoionization detector (PID) to confirm the presence of volatile organic contaminants in the drums.
42. On September 10, 1992, DES personnel spoke with Charles Huckins about the Belmont Gulf site. Although Mr. Huckins claimed that he did not know how the drums got to Belmont Gulf, he agreed, as a temporary measure, to secure the drums in a box trailer on the site. Mr. Huckins further indicated he was working with Dependable Environmental Services, Inc. for removal of the drums.
43. DES has never found or been provided any credible evidence that the drums were stored at Belmont Gulf without the knowledge or consent of Mr. Huckins.
44. On October 19, 1993, DES personnel again spoke with Mr. Huckins, who indicated that he had applied for reimbursement from the ODD Fund for clean-up activities at the Wakefield Site. Mr. Huckins indicated that he would complete the required testing of the drums upon receipt of the reimbursement funds.
45. By letter dated October 28, 1993, DES notified Huckins Oil that its application for reimbursement from the ODD fund was incomplete. Instructions were provided on how to complete the application process in order to qualify for ODD funds.
46. On March 17, 1995, DES personnel sampled two drums at Belmont Gulf. The samples were submitted to the DES laboratory for analysis. The testing showed that both drums contained hazardous waste, as defined under RSA 147-A:2, VII.
47. DES issued Administrative Order No. WMD 95-3 (“Drum Removal Order”) dated June 21, 1995 to the Huckins Oil Company, alleging violations of hazardous waste activity notification and Permitting requirements. The Drum Removal Order required a hazardous waste determination to be completed within 30 days and the drums to be delivered to a facility authorized to accept the waste within 45 days. Additionally, the Drum Removal Order noted that RSA 147-A:7, II provides for civil forfeitures of up to \$50,000 for each day of continuing violation.
48. Mr. Huckins received the Drum Removal Order on June 30, 1995, as evidenced by a signed return receipt card received by DES on July 3, 1995.
49. Huckins Oil did not respond to or comply with the Drum Removal Order.

50. DES personnel contacted Mr. Huckins on September 7, 1995 to request a key to the Belmont Gulf trailer so that the DES could remove the drums. Mr. Huckins indicated that he would contact his attorney and get back to the DES. At no time during this conversation did Mr. Huckins indicate that he had lost or otherwise misplaced the Drum Removal Order.
51. Huckins Oil appealed the Drum Removal Order to the Waste Management Council ("Council") on October 3, 1995.
52. NH Administrative Rule Env-WMC 203.02, as adopted by the Council effective June 21, 1990, states that "Any appeal shall be filed no later than 30 days after the date the decision being appealed was issued." The Drum Removal Order indicates in Part F that any appeal must be filed within 30 days of receipt of the Drum Removal Order.
53. Under the Council's rules, the time for filing an appeal of the Drum Removal Order expired on July 21, 1995. Even if the deadline is 30 days from receipt, the time expired on July 30, 1995. On October 25, 1995, the Council rejected the Huckins Oil appeal.
54. On June 26, 1996, DES personnel returned to Belmont Gulf with the State's hazardous waste disposal contractor for the purpose of removing the hazardous waste from Belmont Gulf for proper disposal. Mr. Huckins was present to unlock the storage trailer. DES personnel advised Mr. Huckins that DES would mail him a copy of the final disposal invoice along with a request for payment. Mr. Huckins was also advised that, if Huckins Oil did not pay for the cleanup, the matter would be referred to the New Hampshire Attorney General's Office for collection.
55. By letter dated May 13, 1997 and sent via certified mail, DES advised Mr. Huckins of the final cleanup expenses and that a certified check in the amount of \$8,271.16 should be forwarded to DES within 30 days of receipt of the letter.
56. Mr. Huckins received the letter on May 15, 1997, as evidenced by a signed return receipt card received by DES on May 16, 1997.
57. DES has not, to date, received reimbursement for these costs.
58. In accordance with the provisions of RSA 147-B:10-b, DES recorded a Notice of Lien against Huckins Oil and the Wakefield Site real property for final cleanup costs incurred by DES at the Belmont Site. The Notice of Lien was recorded in the Belknap County Registry of Deeds at Book 1819, Page 223 on July 26, 1999.

D. Determinations

1. Huckins Oil has violated Env-Wm 1403.15(f) by failing to submit groundwater monitoring data for the Huckins Oil Site on 15 separate occasions during the five-year permit monitoring period.
2. Huckins Oil has violated Env-Wm 1403.23(b) by failing to submit groundwater monitoring data for the Huckins Oil Site on 13 separate occasions after expiration of the permit.
3. Huckins Oil has violated Env-Wm 1403.13(f) and 1403.15(f) by failing to prepare and

submit groundwater management permit annual status reports for Huckins Oil on 9 separate occasions, both during the Permit period and after Permit expiration.

4. Huckins Oil has violated Env-Wm 1403.23(a) by failing to apply for renewal of the Huckins Oil groundwater management permit 90 days prior to its expiration.
5. Huckins Oil is liable for hazardous waste generator fees of \$1,475.58.
6. Huckins Oil has violated RSA146-C:4 by failing to pay the Wakefield Site's (#0113657) UST system Permit-to-operate fee from 1990 through 2001, for a total of \$770.00.
7. Huckins Oil has violated Env-Wm 1401.11(a) by failing to conduct inventory monitoring of two UST systems and to maintain records for two UST systems at the Wakefield Site (#0-113657).
8. Huckins Oil has violated Env-Wm 1401.25 by failing to install spill and overfill prevention devices on two UST systems at the Wakefield Site (#0-113657).
9. Huckins Oil has violated Env-Wm 1401.31 by failing to conduct annual leak monitoring equipment tests and maintain the leak monitoring devices on two UST systems at the Wakefield Site (#0-113657).
10. Huckins Oil has violated Env-Wm 1401.32(c) by failing to test the cathodic protection systems from 1986 to the present on two UST systems at the Wakefield Site (#0-113657).
1. Huckins Oil is liable to DES for drum removal response costs of \$8,271.16.
12. Huckins Oil has failed to comply with Administrative Order No. WMD 95-3

E. Order

Based on the above findings and determinations, DES, with the consent of Huckins Oil, hereby orders Huckins Oil to undertake and complete the following actions:

1. Remove the two 6,000-gallon tanks at the Huckins Oil Site to correct all UST facility compliance deficiencies within 60 days of executing the Order.
2. Deposit all ODD Fund Reimbursement checks in an escrow account kept by Orr and Reno until all financial obligations and the tank removal provisions of this Order are satisfied. Until the provisions of the Order are satisfied, the escrow account can be used solely for purposes related to compliance with this Order.

F. Payment of Fees, Cost Recovery, and Fines

Based on the above findings and determinations, Huckins Oil further agrees to the following:

1. The amount of \$8,271.16 will be deducted from the ODD fund reimbursement for the Wakefield Site and paid to the Hazardous Waste Cleanup Fund for the cost of the drum removal.
2. The amount of \$1,475.58 will be deducted from the ODD fund reimbursement for the

Wakefield Site and paid to the Hazardous Waste Cleanup Fund for overdue hazardous waste generator fees.

3. The amount of \$770 will be deducted from the ODD fund reimbursement for the Wakefield Site for the overdue Permit-to-operate fees.
4. The amount of \$25,000 in fines will be deducted from the ODD fund reimbursement for the Wakefield Site and paid to the DES LUST cost recovery account for groundwater management Permit, UST facility, and Drum Removal Order violations.
5. An additional \$10,000 in fines shall be suspended, contingent on Huckins Oil complying with all provisions of this Order and submitting: (a) updated groundwater monitoring results for the Huckins Oil Site to DES within 90 days of execution of this Order, and (b) a revised remedial action plan for Huckins Oil by December 31, 2001. Huckins Oil shall pay the suspended fine to DES immediately if it fails to comply with any provision of this Order.
6. DES will release the lien on the Huckins Oil Site and will release the Drum Removal Order following the payment of all fees, non-suspended fines, and cost recovery monies to DES.
7. Huckins Oil will submit a reimbursement request to the Petroleum Reimbursement Fund for a transfer of funds to the DES Oil Remediation and Compliance Bureau cost recovery account within 60 days of receipt of a cost recovery invoice for DES project oversight costs.

G. Consent and Waiver of Appeal

1. By execution of this Order, Huckins Oil agrees that this Order shall apply to and be binding upon Huckins Oil and agrees that this Order may be entered into and enforced by a court of competent jurisdiction. Huckins Oil admits to all facts identified in this Order, and accepts liability for all violations identified herein.
2. Huckins Oil waives any right to appeal this Order provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of this Order by a court of competent jurisdiction.

H. Other Provisions

1. Payment under paragraph F.5. shall be made by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

Attention: James Ballentine, Paralegal
DES Legal Unit
PO Box 95
Concord, NH 03302-0095

2. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
3. The effective date of this Administrative Order by Consent will be the date on which it is signed by an authorized representative of Huckins Oil, the Director of the Waste Management Division, and the Commissioner of DES.
4. No failure by DES to enforce any provision of this Administrative Order by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

HUCKINS OIL COMPANY, INC.


Charles Huckins, President

Date: April 24 2001

DEPARTMENT OF ENVIRONMENTAL SERVICES

COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division

Date: _____

4/30/01

COPY

Robert W. Varney
Commissioner

Date: _____

4/30/01